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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

5 INEOQUEST TECHNOLOGIES, INC.) Case No.: CV-08-7773 GHK (PLAx)

Plaintiff/Counterdefendant) Hon. George H. King

vs.

8) CONFIDENTIALITY
9) AGREEMENT AND
IXIA) PROTECTIVE ORDER

0 || Defendant/Counterclaimant.

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TO THE HONORABLE COURT, ALL CURRENT PARTIES, AND
THEIR RESPECTIVE ATTORNEYS OF RECORD:

Pursuant to Federal Rule of Civil Procedure 26(c), Plaintiff and Counter-defendant, IneoQuest Technologies, Inc., and Defendant and Counterclaimant, Ixia (together, the “parties”), by and through their respective undersigned counsel, hereby stipulate to the following Stipulated Confidentiality Agreement and Protective Order (the “Order”) and request the Court’s approval as follows:

WHEREAS, the pleadings in this action present trade secret and patent issues requiring discovery and disclosure of sensitive technical, financial and proprietary information by each of the Parties, the confidentiality of which is important to them;

WHEREAS, the Parties have consulted, negotiated and agreed upon provisions of a Protective Order for this litigation to protect such sensitive information; and

WHEREAS, discovery has not yet commenced and no Party will be prejudiced by the issuance of a Protective Order in this action, whereas the absence of any Protective Order will impede discovery and be prejudicial to both Parties,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between all parties, that good cause exists for such Protective Order and an Order of the Court is respectfully requested on the terms in the numbered paragraphs that follow:

GOOD CAUSE STATEMENT

1. In connection with discovery, Plaintiff IneoQuest and Defendant Ixia intend to produce documents and information pertaining to their trade secrets, finances, marketing plans and proprietary technology which is confidential in nature. Pursuant to Fed. R. Civ. P. 26(c), the parties believe that good cause exists

1 for entry of a Protective Order to maintain confidential documents in the
2 following categories, which contain confidential, proprietary and trade-secret
3 information:

- 4 • Source code, computer-aided designs, computer simulations, test data,
5 technical drawings, memoranda, reports, correspondence and other
6 similar materials which contain non-public, technical and trade secret
7 information;
- 8 • Financial information pertaining to the parties' income, expenses,
9 revenue and ongoing business, including budgets, profits, losses,
10 costs, margins, and pricing, which contain confidential data;
- 11 • Marketing and sales information, including market analysis, business
12 and marketing plans, strategies and forecasts, customer requirements
13 and customer contacts, which contain confidential, trade secret or
14 proprietary information; and
- 15 • Unpublished patent prosecution information, including present or
16 future applications.

17 2. The production of the above-referenced confidential documents and
18 confidential information in this action, without a Protective Order, could cause
19 serious harm to the privacy and business interests of the parties to the litigation.
20 Moreover, the sharing of confidential information among the parties will promote
21 fairness and efficiency in the litigation; it will enable the parties to reach
22 conclusions with regard to technical issues relating to the development of various
23 products at issue in this dispute. In addition, the confidential financial information
24 would be useful to determining issues pertaining to damages in the litigation.

**STIPULATED CONFIDENTIALITY AGREEMENT AND
PROPOSED PROTECTIVE ORDER**

3 1. Any information produced by the parties in this action (whether
4 through oral testimony, interrogatory answers, production of documents and
5 things, answers to requests for admission or otherwise) that the parties reasonably
6 and in good faith believe to be a trade secret or other confidential research,
7 development, financial or commercial information entitled to protection may be
8 designated “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES
9 ONLY” as specified below. Information so designated and marked as specified
10 below will thereafter be subject to the provisions of this Stipulated Confidentiality
11 Agreement and Protective Order.

12 2. A party may designate information, documents, things or materials as
13 "CONFIDENTIAL" when produced if the producing party believes in good faith
14 that the information contained therein is sensitive non-public research,
15 development, financial or commercial information.

16 3. A party may contend in good faith that certain information,
17 documents, things or materials contain information of an especially sensitive
18 commercial or proprietary nature and at the same time concern information as to
19 which the parties are direct competitors. A party producing such information,
20 documents, things or materials shall be entitled to designate same as
21 “CONFIDENTIAL – ATTORNEYS EYES ONLY” when produced, if each of the
22 following criteria are met:

23 (a) the information at issue is:

(ii) highly sensitive financial information related to particular budgets, profits, losses, costs, margins, or pricing;

(iii) unpublished patent prosecution information including present or future applications; or

10 In any proceeding addressing whether a “CONFIDENTIAL – ATTORNEYS
11 EYES ONLY” designation has properly been applied, the party designating
12 materials as “CONFIDENTIAL – ATTORNEYS EYES ONLY” shall bear the
13 burden to show the designation is appropriate, and meets the criteria set out in this
14 Section 3.

15 4. Where information, documents, things or materials are designated
16 “CONFIDENTIAL – ATTORNEYS EYES ONLY,” the designation will only
17 apply to those portions of the information, documents, things or materials that
18 satisfy the requirements set forth in Section 3. All other portions of the
19 information, documents, things or materials will be designated
20 “CONFIDENTIAL.”

21 5. Information shall not be designated as either CONFIDENTIAL or
22 CONFIDENTIAL – ATTORNEYS EYES ONLY if:

27 (b) it is acquired from a non-party in lawful possession of such
28 information and under no obligation to the owner of the information to keep it

1 confidential, unless the non-party producing the information is subject to the
2 protections of this Stipulated Confidentiality Agreement and Protective Order as
3 set forth in paragraph 18 below;

4 (c) The information was rightfully in the possession of the
5 receiving party prior to the producing party's disclosure;

6 (d) The information is, or was, independently developed by the
7 receiving party, without reference to the producing party's CONFIDENTIAL or
8 CONFIDENTIAL – ATTORNEYS EYES ONLY information.

9 6. Information designated as CONFIDENTIAL or CONFIDENTIAL –
10 ATTORNEYS EYES ONLY shall be marked as follows:

11 (a) Any information that is disclosed in writing (e.g., in a document
12 or an interrogatory answer) shall be stamped or otherwise clearly marked
13 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY on each
14 page of the writing on which such information is disclosed. Stamping or marking
15 of the writing as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES
16 ONLY shall be done prior to production of the information by the parties. The
17 marking shall be done in a manner that will not interfere with the legibility of the
18 written information.

19 (b) If information or documents are produced on a computer
20 storage medium such as a CD-ROM, such information or documents shall be
21 designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES
22 ONLY by stamping or otherwise clearly marking CONFIDENTIAL or
23 CONFIDENTIAL – ATTORNEYS EYES ONLY on the CD-ROM or other
24 storage medium. Stamping or marking of the computer storage medium as
25 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY shall be
26 done prior to production of the information.

27 (c) Any information that is disclosed through any other means of
28 production (e.g., production of tangible things) shall be stamped, labeled or

1 otherwise clearly marked CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS
2 EYES ONLY on each thing produced. Stamping or marking of the thing as
3 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY shall be
4 done prior to production of the information.

5 (d) Any information that is disclosed by oral testimony (e.g., at a
6 deposition or pre-trial hearing) may be designated as CONFIDENTIAL or
7 CONFIDENTIAL – ATTORNEYS EYES ONLY by making an appropriate
8 statement on the record at the time of the testimony. Any pages of a transcript
9 containing information that has been designated as CONFIDENTIAL or
10 CONFIDENTIAL – ATTORNEYS EYES ONLY shall be stamped or marked
11 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY and shall
12 be bound separately from the remaining portion of the transcript (whether such
13 transcript is a “rough” or final copy).

14 7. In the event that any party inadvertently fails to designate as
15 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY any
16 information (including testimony) that is produced and that any party reasonably
17 and in good faith believes should be so designated, that party may subsequently
18 make such a designation by notifying counsel in writing that the information or
19 documents must be treated as CONFIDENTIAL or CONFIDENTIAL –
20 ATTORNEYS EYES ONLY under this Order (a “Post-Production Notice”).
21 After receipt of a Post-Production Notice, the parties will treat the information
22 (including testimony) as if it had been designated CONFIDENTIAL or
23 CONFIDENTIAL – ATTORNEYS EYES ONLY at the time that the information
24 was produced; provided, however, that any good faith disclosures prior to the
25 receiving party’s receipt of a Post-Production Notice shall not constitute a breach
26 of this Stipulated Confidentiality Agreement and Protective Order. The producing
27 party will promptly thereafter furnish the receiving party with a substitute set of
28

1 documents (or transcripts) bearing the correct stamp or notice and the receiving
2 party will return or destroy the original set and all copies.

3 8. Any information marked CONFIDENTIAL – ATTORNEYS EYES
4 ONLY may be disclosed only, to:

5 (a) outside counsel of record for each of the Parties to this action,
6 and their respective partners, associates and necessary clerical and legal support
7 personnel employed by such counsel;

8 (b) In-house counsel for each of the Parties to this action, provided
9 that such in-house counsel may only have access to any information marked
10 CONFIDENTIAL – ATTORNEYS EYES ONLY while physically present at
11 outside counsel's office and/or during a deposition, hearing or trial in this matter;

12 (c) independent experts or independent consultants retained by
13 counsel of record for purposes of this action, subject, however, to the provisions of
14 paragraphs 12 and 13 below

15 (d) the Court, including any court to which an appeal may lie, and
16 its employees;

17 (e) court reporters taking or transcribing testimony given at a
18 deposition, hearing or trial;

19 (f) persons who are identified on the face of a writing containing
20 such information as the authors or recipients of the information;

21 (g) the witnesses and jurors at any trial of this action, subject to
22 terms and instructions that shall be determined prior to trial and set forth in a
23 supplementary order of protection;

24 (h) deponents in a deposition proceeding subject to the provisions
25 of paragraphs 12 and 13 below;

26 (i) outside vendors who perform microfiching,
27 photocopying, computer classification, or similar clerical functions, but only for so
28 long as and to the extent necessary to perform those services; and

(j) any other persons that the Court designates, in the interests of justice, upon such terms that the Court deems proper.

3 9. Any information marked CONFIDENTIAL may be disclosed only, to:

4 (a) The individuals specified in paragraph 8(a), 8(c) – 8(j); and

5 (b) in-house legal counsel of a party and necessary clerical and

6 legal support personnel employed by such counsel; and employees of a party who
7 have been designated by counsel for the receiving party, subject, however, to the
8 provisions of paragraph 12 below.

9 10. Under no circumstance may information designated as

10 || CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY be

11 disclosed to any person or entity, other than those identified above without the

¹² See, e.g., *U.S. v. Gandy*, 100 F.3d 1350, 1354 (11th Cir. 1996) (“[T]he term ‘knowingly’ is not limited to the subject’s actual knowledge of the true facts.”); *U.S. v. Ladd*, 100 F.3d 1350, 1354 (11th Cir. 1996) (“[T]he term ‘knowingly’ is not limited to the subject’s actual knowledge of the true facts.”).

¹³ See also the discussion of the relationship between the concept of "cultural capital" and the concept of "cultural value" in the section "Cultural Capital and Cultural Value."

14 paragraph 26. As specified in paragraph 25, a breach of the provisions of the

Order will subject the party responsible for the breach to sanctions, in the

10 discretion of the Court. In the event that information designated

CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY is

18 disclosed orally (e.g., at a deposition or pre-trial hearing), the disclosing party

shall have the right to exclude from attendance at said deposition any person other

then the donee and those persons identified in paragraph 8 above (with respect

21 CONFIDENTIAL - ATTORNEYS EYES ONLY

22 To information designated as CONFIDENTIAL - ATTORNEY'S EYES ONLY, or
23

23 paragraph 9 above (with respect to information designated as CONFIDENTIAL).
24

11. In the event that a party disagrees with the propriety of the design

CONFIDENTIAL OR CONFIDENTIAL – ATTORNEYS EYES ONLY,

objecting party shall serve the disclosing party with written notice of the

objection, as prescribed in Local Rule 37-1 of this Court. The parties will have

1 ten (10) business days from the date of service of the objection to try, in good
2 faith, to resolve such dispute on an informal basis. Failure to respond to a written
3 notice of objection within ten (10) business days of its service will be deemed to
4 be a refusal to seek an informal resolution. If the parties are unable to resolve
5 their dispute informally, the parties may present the dispute to the Court for
6 judicial resolution, pursuant to Local Rules 37-2.1 through 37-2.4. If confidential
7 material is included in any papers to be filed in Court, such papers shall be
8 accompanied by an application to file the papers -- or the confidential portion
9 thereof -- under seal; the application must demonstrate good cause for the under
10 seal filing. The application shall be directed to the judge to whom the papers are
11 directed. Pending the ruling on the application, the papers or portions thereof
12 subject to the sealing application shall be lodged under seal. The Court may then
13 determine whether the information should be designated CONFIDENTIAL –
14 ATTORNEYS EYES ONLY , CONFIDENTIAL, or neither, as the case may be.
15 All information whose designation as CONFIDENTIAL is disputed shall be
16 treated as CONFIDENTIAL until such time as the Court determines or the parties
17 agree otherwise. All information whose designation as CONFIDENTIAL –
18 ATTORNEYS EYES ONLY is disputed shall be treated as CONFIDENTIAL –
19 ATTORNEYS EYES ONLY until such time as the Court determines or the parties
20 agree otherwise.

21 12. The parties shall not disclose information designated
22 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY to any
23 person referenced in subparagraphs 8(b), 8(g) and 9(b) above unless and until
24 such person (each an “Order Declarant”) either (i) first states under oath on the
25 record during a deposition that he or she agrees to be bound by the provisions of
26 this Stipulated Confidentiality Agreement and Protective Order or (ii) first
27 executes a declaration that he or she agrees to be bound by the provisions of this
28 Stipulated Confidentiality Agreement and Protective Order in the format attached

1 hereto as Exhibit A. The party receiving information designated
2 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY shall be
3 responsible for retaining the original of the Declaration signed by each Order
4 Declarant to whom he or she discloses the information designated
5 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY. Counsel
6 for the party receiving the CONFIDENTIAL or CONFIDENTIAL –
7 ATTORNEYS EYES ONLY shall provide to counsel for the disclosing party,
8 upon written request, copies of all such executed Declarations upon the conclusion
9 of this action (or earlier, upon reasonable request). Each Order Declarant shall be
10 deemed to have consented to the personal jurisdiction of this Court for the purpose
11 of enforcement of this Order.

12 13. For purposes of this section, the term "Financial Expert or Consultant"
13 shall mean an expert or consultant retained by counsel of record for purposes of
14 analyzing financial elements of this matter, including alleged damages and other
15 economic losses. The term "Other Experts and Consultants" means an expert or
16 consultant retained by counsel of record that does not qualify as a Financial
17 Expert or Consultant. Unless otherwise ordered by the Court or agreed in writing
18 by the disclosing party, a party that seeks to disclose information designated as
19 CONFIDENTIAL – ATTORNEYS EYES ONLY to Other Experts or Consultants
20 referenced in subparagraph 8(b) and/or to a person referenced in subparagraph
21 8(g) first must make a written request to the disclosing party that: (1) sets forth
22 the full name of the person and the city and state of his or her primary residence;
23 and (2) attaches a copy of the Other Expert or Consultant's, or deponent's current
24 resume, or a description of his or her current position and employer. A party that
25 makes a request and provides the information specified in the preceding paragraph
26 may disclose the subject information to the identified Other Expert or Consultant
27 and/or deponent unless, within ten (10) court days of delivering the request with
28 respect to an Other Expert or Consultant referenced in subparagraph 8(b) or

1 within three (3) court days of delivering the request with respect to a person
 2 referenced in subparagraph 8(g), the party receives a written objection from the
 3 disclosing party. Any such objection must set forth in detail the grounds on which
 4 it is based. A party that receives a timely written objection must meet and confer
 5 with the disclosing party in accordance with Local Rule 37-1 to try to resolve the
 6 matter by agreement. If no agreement is reached, the parties may file a joint
 7 stipulation with the Court for resolution of the matter, pursuant to Local Rules 37-
 8 2.1 through 37-4. Any such joint stipulation must describe the circumstances with
 9 specificity, set forth in detail the reasons for which the disclosure is reasonably
 10 necessary, assess the risk of harm that the disclosure would entail and suggest any
 11 additional means that might be used to reduce that risk. In any such proceeding
 12 the party seeking disclosure of "CONFIDENTIAL - ATTORNEYS EYES
 13 ONLY" documents or information shall bear the burden to show disclosure is
 14 appropriate. This Section 13 does not apply to a Financial Expert or Consultant,
 15 and Section 11 shall govern disclosures to a Financial Expert or Consultant.
 16 Disclosure of a consulting expert in connection with this Section 13 shall not
 17 constitute waiver of any discovery protections or privileges applicable with
 18 respect to such expert, as further provided in Section 25.

19 14. If CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES
 20 ONLY material is included in any papers to be filed in Court, such papers shall be
 21 accompanied by an application to file the papers -- or the confidential portion
 22 thereof -- under seal; the application must demonstrate good cause for the under
 23 seal filing. The application shall be directed to the judge to whom the papers are
 24 directed. Pending the ruling on the application, the papers or portions thereof
 25 subject to the sealing application shall be lodged under seal. in accordance with
 26 Local Rule 79-5

27 15. Except for material filed with the clerk of the Court as provided in
 28 paragraph 14 above, all materials containing information designated

1 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY must be
2 stored under the direct control of counsel or in-house legal counsel for the
3 receiving party, who must take reasonable steps to ensure that such information is
4 maintained in a secure and safe area and that the same standard of due and proper
5 care is employed with respect to storage, custody, use and/or dissemination
6 (including dissemination to persons identified in paragraphs 8 and 9) of such
7 information as is exercised by the recipient with respect to its own confidential
8 information.

9 16. Written materials containing information designated
10 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY may only
11 be copied by the receiving party subject to the following conditions:

12 (a) All copying of written materials containing information
13 designated CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY
14 must be done by:

1 17. Except as otherwise agreed in writing by the producing party, within
2 thirty (30) days after the conclusion of this action, whether by settlement, trial,
3 appeal or otherwise, all materials containing information designated
4 **CONFIDENTIAL** or **CONFIDENTIAL – ATTORNEYS EYES ONLY**, and all
5 copies thereof, shall be returned by counsel for the receiving party to counsel for
6 the producing party. Alternatively, if counsel for the producing party consents in
7 writing, such material may be destroyed by counsel for the receiving party, in
8 which event, a certificate of destruction shall be delivered to counsel for the
9 producing party. The attorneys for the parties will be entitled to retain a single
10 copy of litigation documents, including exhibits and their own memoranda,
11 containing information designated **CONFIDENTIAL** or **CONFIDENTIAL –**
12 **ATTORNEYS EYES ONLY** but such litigation documents and memoranda must
13 be kept in a separate file clearly marked with the notation: “**CONTAINS**
14 **CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER**” and
15 must be used only for the purpose of preserving a file on this action, and must not,
16 without written permission of the opposing party or an order of this Court, be
17 disclosed to anyone other than those individuals set out in paragraph 8(a).

18 18. Non-parties who provide information in response to a subpoena or
19 discovery request may invoke the protection of this Order by (a) designating that
20 information **CONFIDENTIAL** or **CONFIDENTIAL – ATTORNEYS EYES**
21 **ONLY** in accordance with paragraphs 2 through 7, and (b) signing a copy of this
22 Order. Any non-party who invokes the protection of this Order shall also be bound
23 by its obligations.

24 19. Notwithstanding the provisions of this Order, a party may refuse to
25 produce information and/or documents in response to a discovery request if such
26 party is obligated to a third party to keep such information and/or documents
27 confidential until such time as the third party has an opportunity to invoke the
28 protections of this Order or otherwise seek an Order from this Court pursuant to

1 Local Rules 37-1 through 37-4, governing disclosure of such information and/or
2 documents.

3 20. All information designated as CONFIDENTIAL or CONFIDENTIAL
4 – ATTORNEYS EYES ONLY may be used only for purposes of this action, and
5 any appeal thereof, and not for any other action (except for actions in which the
6 plaintiff hereto is named as an adverse party to the defendant hereto, or vice versa)
7 or any business purpose whatsoever.

8 21. This Stipulated Confidentiality Agreement and Protective Order is
9 without prejudice to the right of any party to seek relief from or modification of
10 any provision contained herein after notice to the other party. This Order may be
11 modified by written stipulation of the Parties filed with the Court; provided that
12 any material modifications, or modifications that alter practice under the Local
13 Rules or Federal Rules, require Court approval.

14 22. The parties shall submit this Stipulated Confidentiality Agreement and
15 Protective Order to the Court to be “so ordered” and shall be bound by its terms
16 prior to being “so ordered” by the Court. This Stipulated Confidentiality
17 Agreement and Protective Order shall remain in effect unless modified by an
18 order of the Court or by written stipulation of the parties filed with the Court.

19 23. The parties consent to the continuing jurisdiction of the Court with
20 respect to this Order and any breach thereof, even after the termination of this
21 action. A breach of the provisions of this Stipulated Confidentiality Agreement
22 and Protective Order shall subject the party responsible for the breach to
23 sanctions, in the discretion of the Court.

24 24. The terms of this Order will apply to all pre-trial proceedings; it does
25 not apply to the use of documents or information during the trial of this matter.
26 The parties agree that a separate confidentiality agreement will govern the trial in
27 this matter. The parties agree to negotiate such agreement prior to
28 commencement of trial to govern the use of information designated

1 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY and
2 documents during trial. Counsel for the parties will submit such agreement (or
3 their respective proposals, if no agreement can be reached) to the Court for
4 consideration.

5 25. Nothing in this Order shall be construed as a waiver by any party of
6 its right to object to any discovery request made in this action. The execution of
7 this Order shall not constitute a waiver by any party of any applicable privilege.

8 26. Nothing contained in the Order will be construed as an admission by
9 any party that receives documents or other materials designated CONFIDENTIAL
10 or CONFIDENTIAL – ATTORNEYS EYES ONLY that such materials are, in
11 fact, confidential within the meaning of this Order.

12 27. In the event that a party desires to provide access to information,
13 documents or things identified as CONFIDENTIAL or CONFIDENTIAL –
14 ATTORNEYS EYES ONLY hereunder to any person or category of persons not
15 included in paragraphs 8 or 9 hereof, and if the other party objects thereto, they
16 may resolve their dispute by seeking an Order from the Court pursuant to Local
17 Rules 37-1 through 37-4, that such person or categories of persons may be given
18 access to the information designated CONFIDENTIAL or CONFIDENTIAL –
19 ATTORNEYS EYES ONLY. In the event that the Order is granted, such person
20 or category of persons may have access to the information designated
21 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY; provided
22 that, before such access is given, such person or persons have agreed in writing to
23 be bound by the terms of the Order, in the form set out in Exhibit A to this Order.

24 28. The Parties may agree to modify the designation of any information as
25 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY by written
26 agreement. For good cause, any party may request that the Court revoke, modify
27 or amend a party’s designation of information as CONFIDENTIAL or
28 CONFIDENTIAL – ATTORNEYS EYES ONLY, following the procedures set

1 forth in Local Rules 37-1 through 37-4. The party that initially made the
2 designation will bear the burden of proving that such information is
3 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY within the
4 meaning of this Order. All documents and other materials designated as
5 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY shall be
6 treated by any recipient as such under the terms of this Order unless or until such
7 designation is revoked by the designating party or by the Court pursuant to this
8 paragraph.

9 29. Inadvertent production of attorney-client privileged or attorney work-
10 product information will not waive the attorney-client privilege or attorney work-
11 product immunity if a request for return of such documents or information is made
12 promptly after a producing party learns of its inadvertent production. This
13 provision is not intended to affect the status of any document previously produced
14 by any party in previous litigation.

15 30. Nothing contained in this Order shall affect the right of the
16 designating party to disclose its own confidential information to any person or
17 entity.

18 31. This Order will become effective between the parties upon their
19 execution hereof, and will govern the exchange of confidential information
20 between them prior to entry of this Order as an Order of the Court.

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1 IT IS SO STIPULATED.

2 HOLLAND & KNIGHT LLP

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4 By: /s/ Richard T. Williams
Richard T. Williams (SBN 52896)
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6 Los Angeles, CA 90071-20400
Telephone: (213) 896-2400

7 *Of Counsel*
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8 Benjamin D. Emerson (BBO #660553)
10 St. James Avenue
Boston, MA 02116
Telephone: (617) 523-2700

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10 Attorneys for Plaintiff IneoQuest
Technologies, Inc.

11
12 Dated: May 14, 2009

13 IT IS SO ORDERED:

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19 Paul L. Abrams
UNITED STATES MAGISTRATE JUDGE

20 Date: May 15, 2009

21 BRYAN CAVE LLP

22
23 By: /s/ Howard O. Boltz, Jr.
Howard O. Boltz, Jr. (SBN 70212)
120 Broadway, Suite 300
Santa Monica, California 90401
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24 *Of Counsel*
J. Bennett Clark (*pro hac vice*)
Daniel A. Crowe (*pro hac vice*)
One Metropolitan Square
211 N. Broadway, Ste. 3600
St. Louis, Missouri 63102
Telephone: (314) 259-2000

25 Attorneys for Defendant Ixia

26 Dated: May 14, 2009

EXHIBIT "A"

NON-DISCLOSURE AGREEMENT

The undersigned hereby acknowledges that he/she/it has read the attached Stipulated Confidentiality Agreement and Protective Order entered in the above cited action, on _____ [date] _____, understands the terms thereof, and agrees to be bound by such terms and submit to the jurisdiction of the District Court for the Central District of California for purposes of enforcing this order.

By: _____

<ADD TITLE>

Dated: _____

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